

ALCOHOLIC BEVERAGES DIVISION[185]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 123.21, the Alcoholic Beverages Division hereby gives Notice of Intended Action to amend Chapter 16, “Trade Practices,” Iowa Administrative Code.

The proposed amendments rescind rule 185—16.7(123) as it currently appears and adopt three new rules on tasting, sampling and trade spending in order to separate the subject matter. The proposed amendments define terms and explain each subject matter in greater detail to provide clarity for the reader.

Prior to the filing of this Notice, the proposed amendments were circulated to stakeholders and discussed in a series of working meetings. Comments received as a result of these activities were considered.

Any person or agency may submit written comments concerning the proposed amendments or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to Tyler Ackerson, Alcoholic Beverages Division, 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021; Internet e-mail address: Ackerson@iowaabd.com.
5. Be received by the Alcoholic Beverages Division no later than 4:30 p.m. on September 8, 2015.

A meeting to hear requested oral presentation is scheduled for Friday, September 11, 2015, at 10 a.m. in the training room at the Alcoholic Beverages Division, 1918 S.E. Hulsizer Road, Ankeny, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

These amendments do not provide for waivers in specified situations. An agencywide waiver provision is provided in 185—Chapter 19.

After analysis and review of the rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 123.

The following amendments are proposed.

ITEM 1. Adopt the following **new** definitions in rule **185—16.1(123)**:

“*Brand*” means each alcoholic liquor, wine, beer, or high alcoholic content beer packaged and sold under a separate name, class, type, or kind designation (wine appellation of origin, wine vintage date, alcoholic liquor age, percentage of alcohol, etc.).

“*Product*” means alcoholic liquor, wine, beer, or high alcoholic content beer as defined in Iowa Code chapter 123.

“*Sampling*” means the practice of industry members giving product to a retailer for the purpose of market research, education, promotion of the product, or determination of the flavor of the product.

“*Tasting*” means the presentation and serving of a product by industry members or retailers to consumers for the purpose of market research, education, promotion of the product, or determination of the flavor of the product.

“*Trade spending*” means the practice of industry members promoting their brand by purchasing alcoholic beverages for consumers where alcoholic beverages are sold and served for on-premises consumption.

ITEM 2. Rescind rule 185—16.7(123) as follows:

~~**185—16.7(123) Tastings, samplings and trade spending.** An industry member may conduct tastings in a retail establishment, provided that the tasting has the indicia of a tasting and is not a subterfuge to provide a retailer with free merchandise. An industry member may provide samples of alcoholic liquor, wine or beer to a retailer who has not previously purchased the brand from the industry member provided that the quantities of any brand of beer do not exceed 3 gallons; of wine, 3 liters; of alcoholic liquor, 500 milliliters. An industry member may engage in the practice of trade spending (purchasing one round of alcoholic or nonalcoholic beverages for patrons of an on-premises retail establishment). An industry member who engages in trade spending is prohibited from paying the retailer more than the ordinary and customary charge for the beverages.~~

~~This rule is intended to implement Iowa Code section 123.186.~~

ITEM 3. Adopt the following new rules 185—16.7(123), 185—16.8(123) and 185—16.9(123):

185—16.7(123) Tasting.

16.7(1) Restrictions.

a. The amount of product served per person during a tasting shall be limited to the following.

(1) No more than one half of one fluid ounce of any brand of alcoholic liquor.

(2) No more than one fluid ounce of any brand of wine.

(3) No more than two fluid ounces of any brand of beer or high alcoholic content beer.

(4) No more than two fluid ounces of a mixed drink or cocktail as defined in 185—paragraph 4.5(1) “b.”

b. Product shall not be served to, or allowed to be consumed by, any consumer who is under legal age, intoxicated, or simulating intoxication.

c. Product served during a tasting shall not be served by persons under 18 years of age.

16.7(2) Tastings conducted by an industry member. An industry member may conduct a tasting on licensed and unlicensed premises, subject to the requirements and restrictions provided in this rule.

a. *Licensed premises.*

(1) A tasting may be conducted on licensed premises where alcoholic beverages are sold or served.

(2) A tasting shall be limited to the types of alcoholic beverages available for purchase as authorized by the license or permit.

(3) A tasting shall be held during the hours in which alcoholic beverages may be legally sold or served.

(4) An industry member may provide snack foods or hors d’oeuvres for the participants at the tasting.

(5) Product or food served during a tasting shall either be provided by the industry member or purchased at no more than the ordinary retail price from the license or permit holder on whose premises the tasting is being held.

(6) Any product or food remaining at the end of a tasting shall be removed from the licensed premises by the industry member.

b. *Unlicensed premises.*

(1) A tasting of wine, beer, or high alcoholic content beer may be conducted in an unlicensed public place unless prohibited by Iowa Code section 123.46(2) or an applicable ordinance or regulation of the local authority.

(2) A tasting of alcoholic liquor, wine, beer, or high alcoholic content beer may be conducted in an unlicensed private place as defined in 185—subrule 4.23(4).

(3) A tasting of alcoholic liquor is prohibited in an unlicensed public place.

(4) Wine, beer, and high alcoholic content beer served during a tasting shall be obtained from the respective wholesaler.

(5) An industry member may provide snack foods or hors d’oeuvres for the participants at the tasting.

(6) Any product or food remaining at the end of a tasting shall be removed from the premises by the industry member.

16.7(3) *Tastings conducted by a retailer.* A retailer licensed or permitted for on- or off-premises consumption may conduct a tasting, subject to the requirements and restrictions provided in this rule.

a. Product served during a tasting shall be served by a retailer or the retailer's employees or agents.
b. A tasting shall be limited to the types of alcoholic beverages available for purchase as authorized by the license or permit.

c. A tasting shall be held during the hours in which alcoholic beverages may be legally sold or served.

d. Product served during a tasting shall be legally obtained as prescribed by Iowa Code chapter 123.

e. An off-premises license or permit holder may conduct a tasting when there is no charge for product or access.

f. Food may be provided by the retailer for the participants of a tasting.

g. An industry member may be present at a tasting conducted by a retailer for educational and promotional purposes, and may serve product only with the explicit consent of the retailer.

16.7(4) *Record keeping.* An industry member shall keep and maintain records in accordance with rule 185—16.18(123).

This rule is intended to implement Iowa Code section 123.186.

185—16.8(123) Sampling.

16.8(1) *Conditions.* An industry member may give product to a retailer who has not purchased the brand from that industry member within the preceding 12 months.

16.8(2) *Quantity.* Product given to a retailer shall not exceed the following amounts within a calendar year.

a. Three liters of any brand of alcoholic liquor.

b. Three liters of any brand of wine.

c. Three gallons of any brand of beer or high alcoholic content beer.

16.8(3) *Procurement.* An industry member shall obtain alcoholic liquor, wine, beer, or high alcoholic content beer used for sampling from the respective wholesaler.

16.8(4) *Identification.* Each container of product used for sampling shall be clearly labeled with the word "SAMPLE".

16.8(5) *Record keeping.* An industry member shall keep and maintain records in accordance with rule 185—16.18(123).

This rule is intended to implement Iowa Code section 123.186.

185—16.9(123) Trade spending. An industry member may engage in the practice of trade spending.

16.9(1) *Advertising.* Trade spending shall be unannounced and unpublicized.

16.9(2) *Quantity.* The industry member shall be limited to purchasing one round of alcoholic beverages or nonalcoholic beverages for patrons of an on-premises retailer.

16.9(3) *Payment.* The industry member shall pay the retailer no more than the ordinary retail price for the alcoholic beverage or nonalcoholic beverage.

16.9(4) *Record keeping.* An industry member shall keep and maintain records in accordance with rule 185—16.18(123).

This rule is intended to implement Iowa Code section 123.186.